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this Memorandum Decision shall not be
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**IN THE
COURT OF APPEALS OF INDIANA**

BOOKER T. SANDERS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 46A03-0706-CR-274

APPEAL FROM THE LAPORTE SUPERIOR COURT
The Honorable Kathleen B. Lang, Judge
Cause No. 46D01-0604-FB-66

November 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Booker T. Sanders (“Sanders”) appeals his twelve-year sentence for two counts of Dealing in Cocaine as a Class B felony. He contends that the trial court abused its discretion by failing to find his guilty plea as a mitigating circumstance. Finding that Sanders has not demonstrated that his guilty plea was a significant mitigating circumstance, we conclude that the trial court did not abuse its discretion by omitting reference to the plea when imposing sentence. We therefore affirm the judgment of the trial court.

Facts and Procedural History

On April 3, 2006, Sanders knowingly delivered cocaine weighing 2.9 grams, and, on April 6, 2006, Sanders knowingly delivered cocaine weighing 2.0 grams. Thereafter, Sanders was charged with two counts of Dealing in Cocaine as a Class B felony.¹ Sanders and the State entered into a plea agreement whereby Sanders pled guilty to two counts of Dealing in Cocaine. The plea agreement left sentencing to the trial court but capped Sanders’ total sentence at eighteen years. In sentencing Sanders, the trial court identified one aggravating circumstance: Sanders’ criminal history consisting of two felony convictions, one for theft and one for possession of cocaine. The trial court also identified three mitigating circumstances: (1) Sanders’ efforts to rehabilitate himself; (2) his efforts in seeking treatment for his substance abuse problems; and (3) his attempt to gain employment. Finding that the aggravator outweighed the mitigators, the trial court

¹ Ind. Code § 35-48-4-1(a).

sentenced Sanders to two concurrent terms of twelve years, with two of those years on each count suspended to probation. Sanders now appeals.

Discussion and Decision

Sanders contends that the trial court abused its discretion by failing to find his guilty plea as a mitigating circumstance.² We disagree. A finding of mitigating circumstances lies within the trial court's discretion. *Widener v. State*, 659 N.E.2d 529, 533 (Ind. 1995). One of the ways in which a trial court may abuse its discretion is by entering a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration" *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007). Although "[o]ur courts have long held that a defendant who pleads guilty deserves some mitigating weight extended to the guilty plea in return," *Cotto v. State*, 829 N.E.2d 520, 525 (Ind. 2005), "a guilty plea may not be significantly mitigating when the defendant receives a substantial benefit in return." *McElroy v. State*, 865 N.E.2d 584, 591 (Ind. 2007).

Indiana Code § 35-50-2-5 provides that "[a] person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years." Here, faced with two Class B felony convictions, Sanders was susceptible to a potential maximum sentence of forty years (consecutive twenty-year sentences for both counts). However, in exchange for his plea, Sanders' maximum sentence was capped at eighteen years, twenty-two years below the

² Although Sanders cites Indiana Appellate Rule 7(B) as the standard of review, he fails to make any argument regarding the nature of the offenses and the character of the offender. In fact, his argument is that the trial court abused its discretion by not considering his guilty plea as a mitigator. We therefore frame his argument in this regard.

maximum possible. This was a substantial benefit. *See Anglemyer v. State*, --- N.E.2d ---, 2007 WL 3151747 (Ind. Oct. 30, 2007) (“Anglemyer was exposed to a potential maximum sentence of twenty-eight years. In exchange for his plea, Anglemyer received the benefit of a twelve-year reduction in sentence. This alone was a substantial benefit.”). The trial court did not abuse its discretion by omitting reference to the plea when imposing sentence.

Affirmed.

BAILEY, J., concurs.

BAKER, C.J., concurs in result with separate opinion.

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BAKER, Chief Judge, concurring in result.

I agree that Sanders's twelve-year sentence should be affirmed. However, I part ways with the majority's conclusion that the trial court properly omitted Sanders's guilty plea as a mitigating factor. In Scheckel v. State, 655 N.E.2d 506, 511 (Ind. 1995), our Supreme Court determined that a guilty plea demonstrates acceptance of responsibility for a crime and must be considered a mitigating factor. But when a defendant has received some benefit from his guilty plea, he is entitled to little, if any, mitigating weight for it at sentencing. Banks v. State, 841 N.E.2d 654, 658 (Ind. Ct. App. 2006), trans. denied. Moreover, a sentencing court need not agree with the defendant as to the weight or value to be given to mitigating factors. Sipple v. State, 788 N.E.2d 473, 480 (Ind. Ct. App. 2003).

As the majority acknowledges, the benefit of the plea to Sanders was substantial. Slip op. at 4. But for the plea agreement, the trial court could have sentenced Sanders to a maximum of forty years. Therefore, it is unlikely that the trial court would have imposed a lesser sentence, even if it had properly acknowledged the guilty plea mitigator. Thus, it is apparent to me that the trial court's omission in failing to identify Sanders's guilty plea as a mitigating factor amounted to harmless error. See Banks v. State, 841 N.E.2d 654, 659 (Ind. Ct. App. 2006) (holding that when a defendant has already received a benefit from his plea agreement, the trial court commits harmless error in failing to recognize the agreement as a mitigating circumstance), trans. denied.